

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.825 OF 2002
IN
CRIMINAL REVN.APPLN.NO. 98 OF 2002
WITH
CRIMINAL APPLICATION NO.826 OF 2002
IN
CRIMINAL REVN.APPLN.NO. 99 OF 2002
AND
CRIMINAL APPLICATION NO.827 OF 2002
IN
CRIMINAL REVN.APPLN.NO.100 OF 2002

Maharashtra Public Service

Commission

... Applicant
in 3 Cr.Appls.

versus

Amrut Kisan Kalukhe @ Amrut

Sarjerao Bajare and ors.,etc. ... Respondents

...

Mr.R.V. More with Mr. Pratap V. Patil, for the
Applicant in the three Criminal Applications.

Mr.K.V. Saste, for the Respondent State of Maharashtra in the three Criminal Applications. Mr. A.D. Avhad & Mr. Shiva Patil, for Respondent No.1 in the three Crl.Applns.(Mr.Indrajeet Joshi with them)

Mr.Shirish Gupte, Senior Counsel with Mr. Prakash Naik, for Respondent No.2 in Crl.Appln.No.825 of 2002, for Respondents Nos.4, 5, 7, 8, 9, 10 and 11 in Crl.Appln.No.826 of 2002 & for Respondents Nos. 3 to 9 and 11 in Crl.Appln.No.827 of 2002.

Mr. N.B. Pawaskar for Respondents Nos. 2, 3 and 6 in Crl.Appln.No.826 of 2002 & for Respondents Nos. 2, 10, 12, 13 and 14 in Crl.Appln.827 of 2002.

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CORAM : A.M.KHANWILKAR,J.

1st April 2005

P.C.:

. Heard Counsel for the parties. These three applications have been filed for condonation of delay in filing revision applications against the respective orders passed

by the Court below.

2. The orders in question were passed on 29th January 1999, whereas the revision applications have been instituted in this Court on 26th February 2002. There is delay of 2 years and 303 days, as computed by the Office. Explanation has been offered in the applications on affidavit. According to the Applicant, the Applicant had no knowledge about the orders passed by the trial Court till communication was received from the Government vide letter dated 19th November 2000. After receipt of that communication, steps were taken to process the file and those details have been mentioned in paras 6 to 11 of the applications. In substance, it is stated that as the documents were too old and could not be traced, communication was sent to the Deputy Commissioner of Police, Crime Investigation Department, to forward certain documents. The documents, which were received were found to be insufficient for which reason additional documents from the office of the Deputy Commissioner of Police were called for. It is then stated that opinion of the Government

Pleader and Public Prosecutor, High Court, as to whether appeals ought to be filed against the impugned decisions was also invited. It is stated that eventually on 27th September 2001, the Applicant took a decision to challenge the impugned decisions by way of appropriate proceedings. That decision was communicated to the Deputy Commissioner of Police on 28th September 2001, requesting him to make available certain documents. As those documents were not available, a communication was sent to the Joint Commissioner of Police, reiterating the said request, and later on the office of the Deputy Commissioenr of Police eventually by way of letter dated 12th December 2001. The information such as Court No., Case No., name of the police station, was called for from the Registrar of the Metropolitan Magistrate, which became available on 28th December 2001. As the Applicant did not receive all necessary documents from the concerned authorities, it is stated that the staff members of the Applicant personally visited the office of the Registrar, as well as Assistant Public Prosecutor in the Court of Metropolitan Magistrate on 27th and 28th January 2002 and, at

that time only, relevant documents could be procured. Thereafter, in the month of February 2002, the Applicant appointed the Advocate for filing the present revision applications, whereafter the same have been instituted in this Court on 26th February 2002.

3. According to the Respondents, however, the explanation offered by the Applicant is unacceptable. It is contended by Mr. Avhad, which submission is adopted by the Counsel for the Respondents in the companion applications, that the fact asserted by the Applicant that the Applicant had no knowledge about the passing of the order in November 2000 is misleading and false. Inasmuch as, the officers of the Applicant were appearing before the trial Court till November 1998 as witnesses. It is then contended that in any case, no justification is forthcoming as to why no enquiry was made at the instance of the Applicant about the progress of the matter since November 1998 till November 2000. That only reflects about the casual attitude of the Applicant in pursuing the matter. It is then contended that in any case, even after

becoming aware of the order in November 2000, the explanation offered for non-filing of revision applications immediately thereafter is wholly unsatisfactory and cannot be accepted as reasonable cause. It is argued that the record clearly indicates that the conduct of the Applicant was lethargic and not diligent in pursuing the proceedings. It is also argued by Mr. Pawaskar that the Applicant is a separate entity and it was expected of the Applicant to be vigilant in the matter. Moreover, even after receiving the intimation in November 2000, and in particular, the opinion of the Government Pleader, the Applicant and its officers had no good reason to interact with the Deputy Commissioner of Police, instead of directly approaching this Court. On the above arguments, it is contended that delay in filing of the revision applications ought not to be condoned as right has vested in the Respondents.

4. Reliance was placed on the decision of the Apex Court by Mr. Gupte reported in A.I.R. 1981 S.C. 733 in the case of Ajit Singh Thakur Singh v. State of Gujarat, to contend that

sufficient cause must be referable to the period prior to expiry of limitation and the explanation which has been offered for the said period by the Applicant is unacceptable.

5. Having considered the rival submissions, I have no hesitation in taking the view that the explanation offered by the Applicant for condonation of delay in filing the revision applications deserves to be accepted, being sufficient cause in the light of the principle enunciated by the Apex Court in the case of G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore, reported in (1988) 2 S.C.C. 142. This is so because it is stated on affidavit by the Applicant that they had no knowledge about the judgment rendered by the lower Court till November 2000. That fact was, however, disputed by the Respondents by contending that the said assertion is devoid of merits and is only a smokescreen. However, it is not possible to assume certain fact so as to contradict the position stated by the Applicant on affidavit. At least, there is nothing on record to show that the Applicant was informed by

any authority or person about the order passed by the Magistrate till November 2000. After receipt of the communication in November 2000, as mentioned earlier, immediate steps have been taken by the Applicant. May be that the Applicant approached different authorities instead of taking recourse to directly availing of the remedy before this Court, which they were otherwise entitled to in law. That, however, is matter of perception and there is no reason to doubt the bona fides of the officers of the Applicant who were interacting with different authorities to persuade the State to file appeal against acquittal. Besides, it is stated on affidavit by the Applicant that the Applicant have communicated to the Director of Public Prosecution to take appropriate action against the concerned Assistant Public Prosecutor for not informing about the order passed as back as in January 1999. However, what steps have been taken pursuant to that communication has not been placed on record. The learned A.P.P., appearing for the State, is not in a position to mention the status of that action. Be that as it may, it is expected that the said proceedings or action

will be taken to its logical end by the competent authority, if already not taken.

6. In my opinion, having regard to the gravity of the allegations against the Respondents, coupled with the sufficient cause made out by the Applicant for condoning delay, it is appropriate and in the interest of justice that the applications be allowed in terms of prayer clause (a), inspite of the delay of 2 years and 303 days.

7. As mentioned earlier, reliance was placed on the decision of Ajit Singh Thakur Singh (supra). However, that decision is of no avail to the Respondents. The submission clearly overlooks the position that the Applicant has given sufficient cause for its inability to file revision applications before the limitation period, inasmuch as the Applicant had no knowledge about the order having been passed by the lower Court till November 2000. Taking overall view of the matter, I deem it appropriate to condone the delay in the peculiar facts of the present case.

8. Accordingly, all the three Applications are allowed. Revision Applications be registered, if not already numbered, and placed for Admission on Tuesday, 5th April 2005.

(A.M.KHANWILKAR, J.)